

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10897 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHREE GANESH TRAVELLERS

Versus

UNION OF INDIA

Appearance:

MR BA VAISHNAV for Petitioner

MRS SIDDHI D TALATI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision:26/04/99

C.A.V. JUDGEMENT

The prayer of the petitioner in this petition is to quash the communication dated 25.11.1998 issued by the respondent No. 3, rejecting the application of the petitioner for grant of licence under the R.T.S.A. Rules, 1985. The petitioner has further prayed for direction to the respondents to reconsider the

petitioner's application on merit ignoring the aforesaid communication.

2. The petitioner is working as Travel Agent through its proprietor J C Shah. He applied repeatedly to the respondents for granting licence to run the Agency for rail booking. Subsequently advertisement dated 26.6.1998 came to the notice of the petitioner, he again applied for being granted licence for Ahmedabad. The application was in the prescribed proforma. However, the petitioner received a communication dated 27.11.1998 that his application has been rejected. This communication has been challenged on the ground that the action of the respondents is arbitrary and that rejection is based on imaginary ground that the proposed office and other facilities available with the petitioner has not been found suitable. The contention has been that persons to whom licences were granted had no better facilities and accommodation than the petitioner, hence the action of the respondent is arbitrary and liable to be quashed.

3. In response to the notice, counter affidavit has been filed by the respondents, in which a preliminary objection has been raised that since there is provision for appeal under Rule 9 of the Rail Traveller's Service Agents Rules, 1985, the writ petition is not maintainable. Rule 9 (1) of the aforesaid Rules provides that an appeal shall lie against every order of the competent authority made under these Rules to the Central Government. Sub-rule (2) of Rule 9 provides that the appeal under Sub-rule (1) shall be preferred within 30 days from the date on which the order appealed against is communicated to the appellant. The Appellate Authority in such matters, according to Annexure 'A', is General Manager, Western Railway. No appeal has been preferred so far. The learned Counsel for the petitioner contended that since the action of the respondents is arbitrary and a 'pick and choose' formula was adopted by the respondents in granting licence to persons who do not possess better facilities than the petitioner, there was no necessity for filing appeal and hence this writ petition is maintainable. Violation of Article 14 of the Constitution of India was pressed into service.

4. In my opinion, these contentions cannot be accepted. It is not a clear-cut case where infringement of Article 14 of the Constitution of India is involved. The grievance of the petitioner, on the other hand, is that his application has not been properly considered and that licence has been granted to persons possessing lesser facilities than the petitioner. This point can

safely be agitated in appeal before the Appellate Authority namely; General Manager, Western Railways. Since no appeal was preferred, the writ petition is barred by principles of availability of alternative efficacious remedy. Since the remedy provided under the R.T.S.A. Rules is not exhausted, it is not desirable to admit this writ petition for further hearing. The writ petition is accordingly dismissed. Notice discharged. No order as to costs.

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msp.